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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,026	02/05/2001	Orest W. Blaschuk	100086.402C1	6333

500 7590 11/27/2002

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EXAMINER

ALLEN, MARIANNE P

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 11/27/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/778,026	BLASCHUK ET AL.	
	Examiner	Art Unit	
	Marianne P. Allen	1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20, 22-34, 36-50, 52-61, 63-68 and 189 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 20, 22-34, 36-50, 52-61, 63-68, and 189 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-19, 21, 35, 51, 62, 69-188, and 190-191 have been cancelled. No claim 192 was present in the application and as such, could not be cancelled as requested by applicant.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 20 and 22-33, drawn to methods for enhancing drug delivery through the skin by administering a tripeptide, classified in at least class 514, subclass 18, for example.
- II. Claims 20 and 22-33, drawn to methods for enhancing drug delivery through the skin by administering an antibody, classified in at least class 424, subclass 130.1, for example.
- III. Claims 34 and 36-49, drawn to methods for enhancing drug delivery to a tumor by administering a tripeptide, classified in at least class 514, subclass 18, for example.
- IV. Claims 34 and 36-49, drawn to methods for enhancing drug delivery to a tumor by administering an antibody, classified in at least class 424, subclass 130.1, for example.
- V. Claims 50 and 52-59 drawn to methods of treating cancer by administering a tripeptide, classified in at least class 514, subclass 18, for example.
- VI. Claims 50 and 52-59, drawn to methods of treating cancer by administering an antibody, classified in at least class 424, subclass 130.1, for example.

- VII. Claims 60, 61, and 63-68, drawn to methods of inhibiting angiogenesis by administering a tripeptide, classified in at least class 514, subclass 18, for example.
- VIII. Claims 60, 61, and 63-68, drawn to methods of inhibiting angiogenesis by administering an antibody, classified in at least class 424, subclass 130.1, for example.
- IX. Claim 189, drawn to a kit for transdermal delivery, classified in at least 514, subclass 947.

Certain claims appear in more than one group because of the dependencies of the originally filed claims. For example, if group I should be elected, claims 22-33 would not be examined with respect to administering antibodies. The recited modulating agent comprising a tripeptide and an antibody thereto do not have a common structural feature and methods of administering each of these are patentably distinct.

The inventions are distinct, each from the other because:

The methods of groups I-VIII are distinct, each from the other, because they each have different method steps, starting materials, and/or goals. Each method would require a non-coextensive literature search. The product of group IX is distinct from each of the methods because the kit could either not be used in the claimed method or could be used in multiple methods.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and/or the necessity for non-coextensive literature searches, restriction for examination purposes as indicated is proper.

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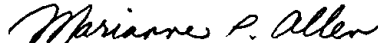
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne P. Allen whose telephone number is 703-308-0666. The examiner can normally be reached on Monday-Friday, 8:30 am - 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 703-308-4028. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3014 for regular communications and 703-305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.


Marianne P. Allen
Primary Examiner
Art Unit 1631

mpa
November 26, 2002